it is stated that the purpose of Order 14 is to enable a plaintiff to obtain summary judgment without trial, if he can prove his claim clearly; and if the defendant is unable to set up a *bona fide* defence or raise an issue against the claim which ought to be tried. Also in *Anglo-Italian Bank* v. *Wells* (*and Davies*) (4) it is stated that Order 14 is intended to prevent a man clearly entitled to money from being delayed, where there is no fairly arguable defence to be brought forward.

The question as to whether or not the notice was invalid and bad in law depends so much on the nature of the relationship of the parties. There is nothing in the statement of claim to indicate what that relationship was although the inference was that it was one of monthly tenancy or licensee. The defendants, on the other hand, in their defence have pleaded that by virtue of an oral agreement and in consideration of a premium of $7,000 there exists a relationship of landlord and tenant and the term of the contractual tenancy was that the tenancy could only be terminated by giving one year's notice in writing. At this stage of the proceedings the question of the relationship of the parties is very much in dispute and consequently, it follows that the question as to whether the relationship has been properly determined is a triable issue. If it were a periodic tenancy, in the absence of any other stipulation, the tenancy is determinable by notice to quit and the sufficiency or validity of the notice to quit becomes a question to be tried.

On the question of leave to defend I have taken note of the fact that there is no dispute that the rent has been in arrears since September 1965 up to date and that further sums will accrue until this action is finally disposed of and that there is a long and heavy list of cases pending for hearing in these courts. In the circumstances the defendants are not entitled to unconditional leave to defend. The ends of justice will be met by making an order that the defendants do provide security to the satisfaction of the Registrar of an amount equal to the arrears in rent as a condition for leave to defend i.e. $24,000. There will also be a direction that the counterclaim of the defendants be disposed of by an independent action.

Order accordingly.

Solicitors: *Kam Woon Wah & Co.; M. N. Cumarasami & Co.*

SADASIVAN v. TAN KOK CHENG

[O.C.J. (Gill J.) April 30, 1966]

[K.L. — Civil Suit No. 352 of 1965]

Landlord and Tenant — Death of tenant leaving no member of family in occupation of premises — Notice to quit served on Chief Justice — Grant of letters of administration to attorney of widow — Whether administrator becomes statutory tenant — Probate and Administration Ordinance, 1959, s. 39.

Executors and Administrators — Attorney of widow obtaining letters of administration — Whether administrator acquires tenancy rights.

In this case the deceased was before his death the tenant of a room at premises in Kuala Lumpur governed by the Control of Rent Ordinance, 1956. The deceased lived alone in the room. He died on May 28, 1964, and on November 20, 1964, the landlord served a notice to quit expiring on December 31, 1964, on the Chief Justice of Malaya in order to terminate the deceased's contractual tenancy. Subsequently the plaintiff obtained a power of attorney from the deceased's widow in India and on December 22, 1964, obtained letters of administration to the estate of the deceased. The plaintiff thereupon claimed possession of the premises.

Held: (1) the contractual tenancy in this case came to an end on December 31, 1964 on the expiry of the notice to quit served on the Chief Justice of Malaya;

(2) as neither the plaintiff nor any member of the deceased's family was in occupation of the premises, no statutory tenancy of the premises could arise and therefore the plaintiff had no claim to the possession of the premises.

Cases referred to:—

(1) *Smith* v. *Mather* [1948] 2 K.B. 212.

(2) *Allagappa Chettiar* v. *Inder Singh* [1962] M.L.J. 246.

(3) *Fred Long & Sons Ltd.* v. *Burgess* [1949] 2 All E.R. 484, 487.

CIVIL SUIT.

K. L. Devaser for the plaintiff.

Thomas M. L. Lee for the defendant.

Cur. Adv. Vult.

Gill J.: The plaintiff in this case is the administrator of the estate of N. G. Panikker deceased who died in Kuala Lumpur on 28th May, 1964, a limited grant of letters of administration having been issued to him as the lawful attorney of N. Saraswathi Geacher, the deceased's lawful widow who lives in India. Up to the time of his death the deceased was a monthly tenant of a portion of the ground floor of the premises at No. 22 Scott Road, Kuala Lumpur. The defendant is the chief tenant of the premises.

The action by the plaintiff is for the delivery to him by the defendant of vacant possession of the portion of the premises occupied by the deceased during his lifetime, the delivery to him of certain properties belonging to the deceased, special damages in the sum of $423 being the expenses incurred by the plaintiff to obtain the discharge of a warrant of distress which the defendant had obtained from the Sessions Court, Kuala Lumpur and general damages.

The facts of the case are not in dispute, apart from the circumstances under which the defendant is alleged to have gone into occupation

of the portion of the premises occupied by the deceased prior to his death.

The deceased lived alone in the portion rented by him. The plaintiff also stays in the same house but in a different room and under a separate tenancy, and so does a woman named Chellamah. He is not a blood relation of the deceased or a beneficiary of the deceased's estate. At no time was he in actual occupation of the premises of which the deceased was tenant. The deceased took food in Chellamah's house and she assisted him whenever he was sick. She looked after the deceased during his illness before his death and she looked after his property after his death, the deceased having given her the keys to the premises occupied by him.

About the 13th of October, 1964 the defendant obtained a warrant from the sessions court, Kuala Lumpur to distrain upon the property of the deceased lying on the premises. Shortly afterwards the plaintiff received a power of attorney from the deceased's widow in India. Presumably upon the strength of that power of attorney he objected to the warrant of distress, and on his objection the warrant was discharged on 27th October, 1964.

On 20th November, 1964 the defendant served a notice to quit on the Chief Justice of Malaya in order to terminate the deceased's contractual tenancy. On 22nd December, 1964 an order was made for a grant of administration of the deceased's estate to the plaintiff, although letters of administration were not issued to him until 12th March, 1965. On 5th January, 1965 the defendant took physical possession of the deceased's portion of the premises by removing the front partition. The deceased's belongings were stored in a room at the back.

To my mind, the sole question to be determined here is whether the plaintiff ever acquired any right or title to or interest in the tenancy to which he has now made claim.

As the deceased died intestate, his estate vested in the Chief Justice of Malaya under section 39 of the Probate and Administration Ordinance, 1959 in the same manner and to the same extent as an estate of an intestate would vest in the Probate Judge in England. The contractual tenancy of the deceased being part of the deceased's estate thus vested in the Chief Justice.

In the case of *Smith* v. *Mather*,[1] in which the estate of a deceased contractual tenant had vested in the President of the Probate Division in England under section 9 of the Administration of Estates Act, 1925 as no letters of administration had been taken out, it was held that the notice to quit served on the President of the Probate Division was valid and that it was the proper procedure for giving effect to the landlord's right to determine the tenancy. On the same principle the service of the notice to quit on the Chief Justice in the present case was a valid notice for the purpose of terminating the deceased's contractual tenancy.

Under the notice served on the Chief Justice in this case the contractual tenancy was to determine on 31st December, 1964. On the making of an order for a grant of administration in favour of the plaintiff on 22nd December, 1964 the deceased's estate vested in the plaintiff under section 39(2) of the Probate and Administration Ordinance, 1959. As the notice which had been served upon the Chief Justice had not expired before that date, the question is whether the making of the order of administration in favour of the plaintiff invalidated that notice. In my opinion the notice was not invalidated. It continued to run against the successor in title of the Chief Justice, so that irrespective of the order made in favour of the plaintiff the tenancy came to an end on 31st December, 1964.

As the premises in this case are governed by the Control of Rent Ordinance, 1956, on the contractual tenancy forming part of the estate coming to an end by reason of the notice to quit served on the Chief Justice a statutory tenancy could arise under that Ordinance in favour of the widow of the deceased if she was residing with him at the time of his death, or in favour of any member of the deceased's family over 18 years of age and so residing with the deceased. To qualify as statutory tenant the tenant must be in continuous residential occupation of the premises from the termination of the contractual tenancy onwards.

The plaintiff in this case was not in occupation of the premises at any time either before or after the death of the deceased tenant. He is not a member of the natural family of the deceased. No statutory tenancy can arise in his favour by reason merely of his being a legal personal representative of the deceased (see *Allagappa Chettiar* v. *Inder Singh* [2]). In *Fred Long & Sons, Ltd.* v. *Burgess* [3] it was held that the doctrine of relation back of title to property to date of deceased's death could not be applied so as to include in the grant of letters of administration to the plaintiff the contractual tenancy which had been extinguished. Bucknill L.J. stated in the course of his judgment:

> "If no grant of administration has been made there is no person other than the president to whom the notice to quit can validly be given. At any date subsequent to the death of the intestate a grant of administration may be made. There is no time limit in this matter. If a grant made years after the death is to make invalid the notice to quit validly given to the president, confusion and uncertainty will prevail and injustice may be done to those who have acted on the assumption that the notice to quit given to the president had full legal effect."

It has been contended on behalf of the plaintiff that as administrator he has a right to look after and wind up the estate. That, of course, is perfectly true. He has a right to look after such part of the estate as exists. It is also contended that the plaintiff has a right to the premises occupied by the deceased until such time as a competent court makes an order for vacant possession against him. The fallacy of this argument lies in the fact that the plaintiff has never been in possession of the premises. There can be substance in his argument only if the contractual tenancy has not been determined. Had no steps been taken to terminate the contractual tenancy, he would be entitled to go into occupation by virtue of the contractual tenancy being vested in him as an administrator, but now that the contractual tenancy has come to an end and as no statutory tenancy can arise in his favour he has no right whatsoever *vis-a-vis* the tenancy of the premises.

It is true that the landlord of controlled premises is not allowed, even after termination of the contractual tenancy, to retake possession against the will of the tenant in the exercise of his common law rights, and this so whatever the method by which the contractual tenancy ended. But if there is no tenant within the meaning of the Control of Rent Ordinance, 1956, the landlord's common law right to retake possession is not restricted. The defendant cannot be expected to seek an order of court for vacant possession against a non-existent lawful or unlawful occupier.

As regards the property of the deceased lying on the premises, numerous letters were sent to the plaintiff asking him to take it away. At no time was this property withheld from him. He is therefore not entitled to an order of delivery up of the property. He is also not entitled to recover any expenses incurred in having the warrant of distress discharged before he became administrator. In any event he could recover his costs only in the distress proceedings.

For the reasons I have stated, the plaintiff's action is dismissed. As he obtained no leave of the court to bring this action, I award costs of the action against him personally.

Action dismissed.

Solicitors: *K. L. Devaser & Co.; Skrine & Co.*

PUBLIC PROSECUTOR v. YUSOFF

[A.Cr.J. (Abdul Aziz J.) May 1, 1966]

[Kota Bharu — Criminal Appeal No. 9 of 1965]

Criminal Law and Procedure — Trial — Nullity — Finding of — Meaning of — Proper order.

A finding that the trial is a nullity means that the whole proceedings of the court is void or that there is no trial. In such a case the proper order that should have been made by the magistrate was a discharge.

CRIMINAL APPEAL.

Azmi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Abdul Aziz J. (delivering oral judgment): In this case the respondent was charged under section 186 of the Penal Code for voluntarily obstructing a public servant, to wit, WPC. 221 in the discharge of her public function. The facts were briefly: on the day in question when WPC. 221 was on duty she saw the respondent carrying a pillion rider. She tried to stop the respondent but he refused to do so but proceeded on to a school. WPC. 221 followed him to the school and caught hold of his bicycle but the respondent pulled the bicycle away from her and the scuffle, it was alleged, amounted to obstruction of duty.

At the close of the case for the prosecution the learned magistrate acquitted and discharged the respondent on the ground that the trial was a nullity by reason of the absence of the sanction as required under section 129 of the Criminal Procedure Code (Cap. 6). Having made such finding the learned magistrate acquitted and discharged the respondent.

To my mind, the learned magistrate has misunderstood the effect of a finding of nullity. A finding that the trial is a nullity means that the whole proceedings of the court is void or that there is no trial. In such a case the proper order that should have been made by the magistrate was a discharge.

I, therefore, substitute a finding of discharge for a finding of acquittal and discharge by the magistrate and this is without prejudice, of course, to any other action that the deputy public prosecutor may wish to take in the pursuit of this charge.

Order accordingly.

MOHAMED NOOR v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Aziz J.) May 1, 1966]

[Kota Bharu — Criminal Appeal No. 7 of 1966]

Criminal Law and Procedure — Sentence — Crimes of violence — Prevalence of — Particular circumstances.

Penal Code, s. 324 — Voluntarily causing hurt with kris.

The appellant was convicted on a charge under section 324 of the Penal Code for voluntarily causing hurt with an instrument for cutting, to wit, a kris. He was sentenced to two years imprisonment. On appeal against the sentence;

Held: having regard to the particular circumstances